

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK GASCA and DEPARTMENT OF THE ARMY,
FORT SAM HOUSTON, San Antonio, TX

*Docket No. 01-783; Submitted on the Record;
Issued November 21, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant had more than an 11 percent monaural hearing loss for which he received a schedule award.

On June 19, 2000 appellant, then a 55-year-old masonry worker, filed a claim alleging that he sustained permanent hearing loss while in the performance of duty. Appellant did not stop work.

Accompanying appellant's claim were employing establishment audiograms dated December 18, 1984 to April 17, 2000 and a narrative statement dated June 19, 2000. The audiograms noted progressive hearing loss. The April 17, 2000 audiogram revealed a significant threshold shift in appellant's hearing and noted that appellant required further medical evaluation. Appellant's narrative statement indicated that he was employed as a masonry worker from October 1984 to the present and worked with heavy equipment. He indicated that he used two types of hearing protection: triple flange ear muffs and disposable earplugs.

The employing establishment furnished the Office of Workers' Compensation Programs with copies of appellant's job description, employment records and medical reports.

In a statement of accepted facts dated July 28, 2000, the Office noted that appellant was exposed to noise on a daily basis from trucks, generators and lawn mowers. The Office also indicated that appellant used heavy-duty hammer drills, power tools and tile and brick cutters.

By letter dated July 31, 2000, the Office referred appellant to Dr. Michael Bertino, a Board-certified otolaryngologist, for otological examination and audiological evaluation. The Office provided Dr. Bertino with a statement of accepted facts, available exposure information, and copies of all medical reports and audiograms.

Dr. Bertino evaluated appellant on August 21, 2000 and audiometric testing was conducted on the doctor's behalf the same date. Testing at the frequency levels of 500, 1,000,

2,000 and 3,000 revealed the following: right ear 20, 15, 25 and 70 decibels; left ear 15, 5, 15 and 55 decibels. Dr. Bertino determined that appellant sustained high frequency sensorineural hearing loss and tinnitus secondary to the hearing loss consistent with a history of chronic noise exposure in the work environment.

On October 19, 2000 an Office medical adviser reviewed Dr. Bertino's report and determined that the date of maximum medical improvement was August 21, 2000. The medical adviser evaluated the audiogram performed on behalf of Dr. Bertino and concluded that appellant sustained employment-related monaural hearing loss.

In a December 1, 2000 decision, the Office notified appellant that his occupational disease claim had been accepted for sensorineural hearing loss, right ear and tinnitus, right ear.

In a decision dated December 15, 2000, the Office determined that appellant was entitled to a schedule award for an 11 percent permanent hearing loss in the right ear. The award ran for 5.72 weeks from weeks from August 21 to September 30, 2000 at 66 2/3 percent of appellant's weekly earnings.

The Board finds that appellant has no more than an 11 percent work-related monaural hearing loss.

Section 8107(c) of the Federal Employees' Compensation Act¹ specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.² For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants.³

The Office evaluates permanent hearing loss in accordance with the standards contained in the A.M.A., *Guides*, using the hearing levels recorded at frequencies of 500, 1,000, 2,000 and 3,000 cycles per second. The losses at each frequency are added up and averaged and a "fence" of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday sounds under everyday conditions. Each amount is then multiplied by 1.5. The amount of the better ear is multiplied by five and added to the amount from the worse ear. The entire amount is then divided by six to arrive at a percentage of binaural hearing loss.⁴

¹ 5 U.S.C. §§ 8101-8193, § 8107(c).

² *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

³ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961).

⁴ Page 166 (4th ed. 1994).

An Office medical adviser applied the Office's standard procedures to the August 21, 2000 audiogram performed for Dr. Bertino. Testing for the right ear at the frequency levels of 500, 1,000 and 3,000 hertz revealed decibels losses of 20, 15, 25 and 70 respectively. These decibels were totaled at 130 and were divided by 4 to obtain an average hearing loss at those cycles of 32.5 decibels. The average of 32.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 7.5 which was multiplied by the established factor of 1.5 to compute 11.25 percent loss of hearing for the right ear.

Testing for the left ear at the frequency levels of 500, 1,000, 2,000 and 3,000 hertz revealed decibels losses of 15, 5, 15 and 55 respectively. These decibels were totaled at 90 and were divided by 4 to obtain the average hearing loss at those cycles of 22.5 decibels. The average of 22.5 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 0 which was multiplied by the established factor of 1.5 to compute a 0 percent hearing loss for the left ear. This calculation results in an 11 percent monaural hearing loss for the right ear and a 0 percent hearing loss for the left ear.

The Board finds that the Office medical adviser applied the proper standards to the findings stated in Dr. Bertino's August 21, 2000 report and the accompanying audiogram. The result is an 11 percent monaural hearing loss of the right ear and a 0 percent hearing loss of the left ear.

The December 15, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 21, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member